AGENDA ITEM NO. 10, Council File No. 09-2545

MOTION OF PACIFIC PALISADES COMMUNITY COUNCIL

"In order to preserve and protect the quality of the community, Pacific Palisades Community Council (PPCC) supports changes in the method of regulating the installation of cellular facilities in the City of Los Angeles in the public rights of way. While the present zoning code imposes requirements, including public notice and hearings, on the placement, design and construction of cellular facilities on other properties, such requirements do not apply to installations of cellular facilities in the public rights of way. PPCC objects to the regulatory process involving public rights of way and urges that the same or similar regulations that apply to the installation of cellular facilities on other properties be required for the installation of such facilities in the public rights of way, including but not limited to existing and replacement utility poles, preferably administered by the same City agency that issues permits for cellular facilities on other properties. PPCC requests that the City place a moratorium on the further installation of cellular facilities in the public rights of way until such time as the City regulations regarding such installations are amended as proposed. PPCC requests that Councilman Rosendahl follow-up on this request and keep PPCC informed of progress on this issue."

Unanimously passed on August 13, 2009

AGENDA #10, CF 09-2645

THE TALE OF TWO CITIES — LOS ANGELES AND ANY OTHER CITY (Revised)

by

Jack Allen

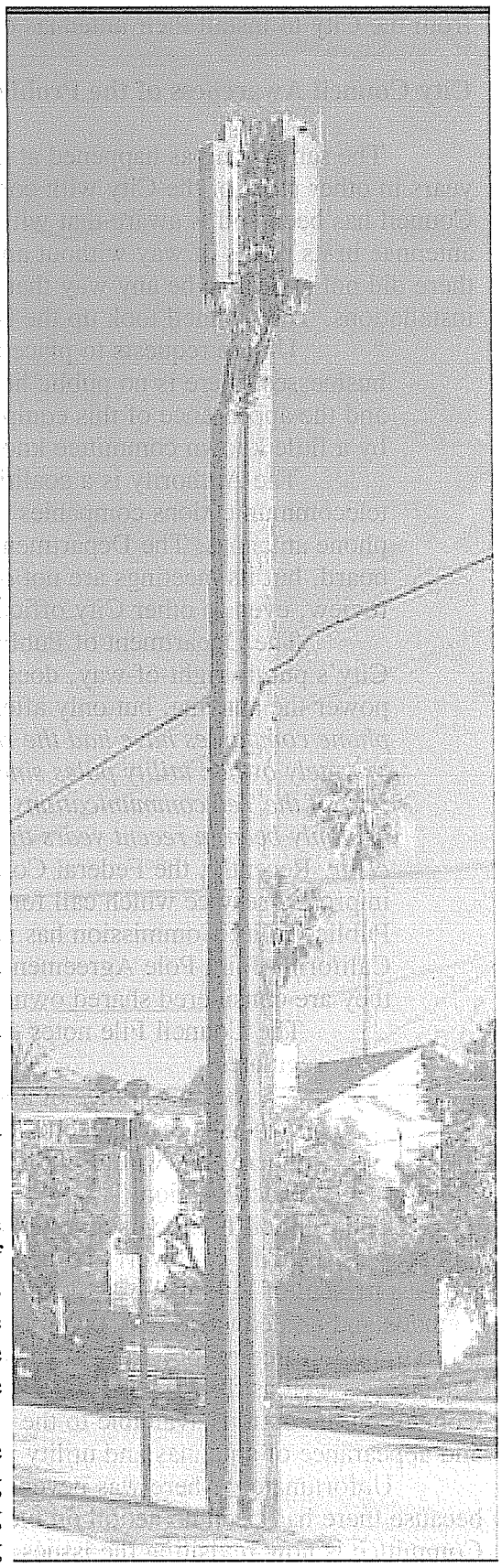
Earlier this year, Pacific Palisades residents of homes at the intersection of Depauw and Via de la Paz saw an ugly monstrosity appear on the corner. No one knew at first what it was that was blighting their view. They knew that a small telephone pole had been located there previously had been replaced with this much higher monster. No one had received any notice from the City of Los Angeles that the old pole would be replaced and that wireless antennas would be installed on the top of the pole, made even more ugly with a large wiring harness running from the ground to the attached antennas protruding out from the pole like three sore thumbs.

That wouldn't have happened if these residents had lived in any other city in Southern California — certainly not in nearby Santa Monica or Beverly Hills. If they lived in any other city nearby residents would have not only received notice that there was an application for a permit to install a wireless facility in the right of way, they would have also had an opportunity to submit comments before the application was considered for approval.

If the application was approved, not only would the nearby residents have the right to appeal to the City Council but so would any interested party, including any community or other homeowners organization. Not in the City of Los Angeles.

Yet the Los Angeles Municipal Code provides that the installation of all wireless facilities with the exception of such facilities located on the tops of buildings in the commercial and manufacturing zones shall require that the applicant obtain a Conditional Use permit from the City's Zoning Administrator.[1] The decision of the Zoning Administrator is appealable to the Area Planning Commission.

However, despite the requirement in the Municipal Code that they obtain a CUP before installing their facilities, wireless providers are not obtaining CUPs for installations of their facilities on either existing or replacement poles located in the City's rights of ways. In fact, wireless providers are not obtaining any permits



THE BIRD

[1] LAMC §12.21.A.20 and §12.24.W.49

from the City to install their antennas on existing or replacement poles.

City Council Awareness of the Problem.

The same thing as happened at DePauw and Via de la Paz has also been happening for years in other parts of the City with complaints also being made to the City Council and the Council has been and is aware that wireless providers were and are installing their wireless antennae in its rights of way without any notice to the affected members of the public and that there did not appear to be any way that the public could object to or even comment on such installations. The Council took up the issue in 2006. The Council was advised:[2]

> " Unlike requests to place new cell phone transmitters on top of homes and businesses, there is no public hearing for this type of installation. Decisions on location and the appearance of this equipment are made by cell phone companies and approved by a little known committee known as the Joint Pole Authority.
>
> The Authority is a coalition of 10 southland cities, governmental agencies and telecommunications companies charged with negotiating 30-year leases for new cell phone antennas. The Department of Water and Power has a representative on this board, but its meetings are not open to the public and its minutes are not available for review, even to other City officials.
>
> The Department of Public Works, which is responsible for maintaining the City's public right-of-way, does hold appeal hearings for any utility boxes installed to power the antenna, but only after the antennas are installed and poles replaced. *Cell phone companies have had the right to place repeater towers on top of City and privately owned utility poles since 1996, when Congress designated them as utilities as part of the Telecommunications Act. While this power has been theirs for a decade, it has only been in recent years that the full implications of this change have become clear.* Recently, the Federal Communications Commission passed mandates for improved service which call for more antennas in areas with spotty service. California's Public Utility Commission has ruled that cities who are parties to the Southern California Joint Pole Agreement must grant utility companies access to their poles as they are considered shared owners." (Emphasis added.)
>
> The Council File notes that the City of Beverly Hills, which is not a party of a JPA, regulates:
>
> > " ...the appearance of antennas placed on poles within its boundaries, and mandates that telecommunication companies provide them with requested areas where they would like to place antennas so that the City can decide the best exact location."

The Council file then suggested that the City of Los Angeles should have the same authority as the City of Beverly Hills and the Council directed the City Attorney, DWP, and the Department of Public Works develop (1) a process to notify Council offices, neighborhood councils and homeowners' associations of all proposed new cell phone antenna installations on utility poles located on public right-of-way and privately owned lot lines in the City of Los Angeles, as well as the locations of all such antennas installed to date; and (2) report to Council on the options available to the City to play a greater role in determining the placement and appearance of antennas and utility poles.

Unfortunately, there was never a follow-up and the Council file was closed this year because there had been no action on the file for two years. The Council Public Works Committee is now revisiting the issues that were raised earlier.

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[2] Council File 06-2415, Cell Phone Antennas

The Report in the Council File is Erroneous.

Before addressing any other issues, it is appropriate to discuss the issues raised in Council File 06-2415. Those issues are mere conclusions, not supported with any facts or citations, and all are erroneous.

a. The Telecommunications Act of 1996

The contentions that somehow the Telecommunications Act of 1996 preempts the City from regulating wireless facilities installed on poles located in the City's rights of way (PROW). The Report states that:

> " Cell phone companies have had the right to place repeater towers on top of City and privately owned utility poles since 1996, when Congress designated them as utilities as part of the Telecommunications Act. While this power has been theirs for a decade, it has only been in recent years that the full implications of this change have become clear."

First, it is not a power. Second, it is a conditional right. A California Appeals Court stated:

> "..."[w]hile Congress sought to limit the ability of state and local governments to frustrate the Act's national purpose of facilitating the growth of wireless telecommunications, *[it] also intended to preserve state and local control over the siting of towers and other facilities that provide wireless services. [Congress] struck a balance between the national interest in facilitating the growth of telecommunications and the local interest in making zoning decisions .... [A]uthority to regulate siting and construction of telecommunications towers is preserved in state and local governments, ... but these decisions are subject to certain [statutory] limitations ...."*[3] (Emphasis added.)

Given the decision of the 9th Circuit Court of Appeals in *Sprint Telephony PCS v. County of San Diego,* 543 F.3d 571 (2008), the City clearly has the authority to regulate the *placement, construction, and modification* of wireless telecommunications facilities in the PROW, so long as the regulations do not prohibit or have the effect of prohibiting the provision of such services or unreasonably discriminate among similar providers of these services.

What the Council File Report is probably referring to is a provision in the Telecommunications Act of 1996 that regulates pole attachments.[4] It provides that subject to capacity, reasons of safety, reliability and generally applicable engineering purposes, a utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it. If this was so, then neither the PUC or any local government could regulate the placement of wireless antennae on poles. However, the PUC has rejected this argument stating:

> "This Commission in its Right-of-Way (ROW) decision (D.98-10-058) concluded that the FCC does not have jurisdiction with respect to access to poles and rights-of-way where such matters are regulated by the state. (D.98-10-058, 82 CPUC2d 510, 530.)

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[3] *City of Rancho Palos Verdes v. Abrams* (2002) 101 Cal.App.4th 367, 379

[4] 47 USC §224

The Commission went on to conclude that it may, under the Pole Attachments Act, 47 U.S.C. § 224, impose on a competitively neutral basis utility pole requirements necessary to protect the public safety and welfare. In short, the Commission has jurisdiction over the safety of overhead electric line construction, operation and maintenance, and it may assert that jurisdiction as to the installation of wireless antennas (or, for that matter, any other attachment, such as fixtures or signs) on utility poles."[5]

All this provision requires is that utilities with existing poles must provide access to its poles. It doesn't in any way, restrict local governments from regulating the siting and construction of wireless facilities within their jurisdictions, so long as such regulations do not discriminate between providers or prohibit the installation of wireless facilities within that jurisdiction. Thus, while wireless providers can not be unreasonably prevented by the owner of a utility pole from placing their antennae on existing utility poles, a local government has the authority to either prevent the installation on that particular pole or authorize it subject to conditions.

Thus, the Council Report is erroneous in relying on the Telecommunications Act of 1996 as a reason why wireless facilities on poles are not being regulated by the City.

b. The Joint Pole Authority (JPA)

"Decisions on location and the appearance of this equipment are made by cell phone companies and approved by a little known committee known as the **Joint Pole Authority**. "

By inference, the Council File Report implies that all the decisions regarding the installation of the wireless facilities on utility poles in the PROW are solely under the jurisdiction of the JPA and not the City. But the Report does not explain why or how the JPA prevents the City from regulating the location and construction of wireless facilities on poles located in the PROW.

The Southern California Joint Pole Committee is made up of a group of member representatives of utilities and municipalities in Southern California who hold joint equity interest in utility poles. Established by telephone, electricity and railroad companies, the Committee has existed since October 10, 1906. It was formed as a result of the need to limit the number of poles in the field and to create a uniform procedure for recording ownership of poles.[6]

The membership of the Southern California Joint Pole Committee consists of 10 cities (LA and nine small cities), Southern California Edison, and all the telecommunication and cable companies. The author could find no evidence that there are any other Joint Power Authorities or Committees in Southern California so that only approximately 5% of the local governments in Southern California belong to such organizations. The City of Los Angeles is

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[5] Order Instituting Rulemaking to Revise General Order 95, R05-02-023 (Filed February 24, 2005)

[6] JPAs probably are the result of a 1905 amendment of Civil Code Section 536 (now Public Utilities Code 7901) which gave telephone companies the right to place telephone poles in public rights of way. Telegraph and power companies already had this right.

represented on the Committee by DWP.[7]

According to the website for the Southern California Joint Pole Committee, its purpose is to keep accurate records of ownership for each pole and keep on file a master record of each jointly-owned pole. The principal function is to calculate the established value of each transaction, involving the sale or purchase of joint pole equity interests or maintenance of those interests. In other words, it is a method by which the owners of utility poles are compensated by other users of the poles for the use of the pole. It could be concluded that the function of the Committee is bookkeeping.

The author has found no statutory authority for the formation of JPAs and the California Public Utility Commission (PUC) does not oversee the compensation that JPAs assess its members for joint use of poles. However, any public utility or telecommunications company which is not a member of JPA can enter into a pole agreement with any utility company for use of its poles however, any such agreement must be approved by the PUC.[8]

The question then is if the primary purpose or function of the Southern California Joint Pole Committee is bookkeeping, then why doesn't the City of Los Angeles have the authority to regulate the installation of wireless antenna on poles located in the PROW.

1. Has the CPUC Prohibited the City From Regulating Installation of Wireless Facilities on Utility Poles Subject to the JPA?

In the Council File Report, it is stated that "California's Public Utility Commission has ruled that cities who are parties to the Southern California Joint Pole Agreement must grant utility companies access to their poles as they are considered shared owners."

Officials at the CPUC have advised the author that this statement is not correct. But even if it was, the CPUC does not prohibit local governments from regulating the installation of wireless facilities on utility poles in the PROW. PUC General Order 159A adopted May 8, 1996 states:

> "B. Deference to Local Government.
>
> Commission acknowledges that local citizens and local government are often in a better position than the Commission to measure local impact and to identify alternative sites. Accordingly, the Commission will generally defer to local governments to regulate the location and design of cell sites and MTSOs including a) the issuance of land use approvals; b) acting as the Lead Agency for purposes of satisfying the CEQA and c) the satisfaction of noticing procedures for both land use approvals and CEQA procedures.
>
> However, in so doing, the Commission shall retain its right to preempt a local government determination on siting when there is a clear conflict with the Commission's goals and/or statewide interests. In those instances, the cellular service provider shall have the burden of demonstrating that accommodating local government's requirements for any specific site would unduly frustrate the Commission's goals or statewide interests. Further, local government and citizens shall have an opportunity to protest a request for preemption and to present their positions. If a cellular service provider establishes that an action by local government unduly frustrates the

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[7] City Charter Section 674 gives the DWP the power to contract with any public or private corporation for a sharing of the use and benefits and of the capital charges and other obligations associated with its facilities, provided that the contract is approved by ordinance.

[8] Public Utilities Code §765 and §765.5

Commission's objectives, then the Commission may preempt a local government pursuant to Commission's authority under the California Constitution, Article XII, section 8."

Thus the PUC has ceded to local governments the authority to regulate wireless facilities in the PROWs.

2. By Entering Into the JPA, Has the City Either Contracted Away or Delegated its Authority to Regulate Wireless Facilities on Poles Subject to the JPA?

The answer is No. The City cannot either contract or delegate away its police power, particularly when it comes to zoning. *Santa Margarita Area Residents Together (SMART) v. San Luis Obispo County Board of Supervisors,* (2000) 84 Cal. App. 4th 221.["It is established that a city or county may not contract away its right to exercise police power in the future (*Avco Community Developers, Inc. v. South Coast Regional Com., supra*, 17 Cal.3d at p. 800) and that the power to enact, modify, and amend zoning and other land use regulations constitutes a part of a county's police power. (*Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1724."]

3. California Public Utilities Code Section 7901.1 Preempts The JPA.

In 1995, the Legislature adopted section 7901.1, which specified it was "the intent of the Legislature, consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed." The provision was added by the Legislature in 1995 "to bolster" the power of cities to manage the construction of telephone facilities in the public rights of way. *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates,* 9th Circuit, No. 05-56106 (Oct. 14, 2009)..

c. The Above Ground Facilities Ordinance.

A reading of the Above Ground Facilities Ordinance (AGF)[9] Ordinance indicates that neither the Zoning Code nor the AGF applies. LAMC §62.02.03.2.IX.C states:

"Pole-mounted and street light-mounted facilities,...street light poles, utility poles, and traffic and pedestrian control fixtures are not subject to the AGFSP, *but will be subject to all other applicable requirements of law*, including, but not limited to, the Joint Pole Agreement (JPA), the Department of Water and Power guidelines, and the Bureau of Street Lighting rules and regulations." (Emphasis added.)

What the AGF Ordinance is saying is that the BOE has no jurisdiction over certain poles including utility poles and that is why the BOE makes no effort to regulate the installation of wireless facilities on these poles.

But it is what it does say that is important. It states that these poles *will be subject to all other applicable requirements of law.* While the section enumerates the JPA, DWP guidelines, and Bureau of Street Lighting rules and regulations, it does not limit the applicable

[9] LAMC §62.02.03.2 Specifications and Procedures for above Ground Facilities Installations in the Public Rights-of-way.

requirements of law just to these provisions.

Thus, the poles are subject to any other City regulations that are applicable. Those regulations are set forth in LAMC §12.21.A.20 *et seq.* and §12.24.W.49 *et seq.* LAMC §12.21.A.20 provides that

> "**Wireless Telecommunication Facilities (WTF) Standards** - *Notwithstanding any provision of this Code to the contrary,* the following standards shall apply to the placement of all wireless telecommunication facilities." (Emphasis added.)

That includes all the provisions requiring a CUP for the installation of wireless facilities. When LAMC §12.21.A.20 is read together with §62.02.03.2.IX.C of the AGF ordinance, they are consistent. §12.21.A.20 states that "Notwithstanding any provision of this Code to the contrary" which means it overrides any other provision in the Code relating to the installation of wireless facilities, including those on utility poles in the PROW in §62.02.03.2.IX.C. But the language in §62.02.03.2.IX.C that these poles are subject to all other applicable requirements of the law makes the section consistent with §12.21.A.20.

Does the Fact That the AGF Ordinance Was Adopted Subsequent to §12.21.A.20 Make It Supercede That Section?

The answer is No. Under the rules of statutory interpretation, §12.21.A.20 takes precedence. In *Casterson v. Superior Court (Cardoso)* (2002) 101 Cal.App.4th 177, 187 the court stated that;

> "The principles of statutory interpretation support defendant's argument. In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. [Citation.] 'We begin by examining the statutory language, giving the words their usual and ordinary meaning.' [Citations.] If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs."

There is no ambiguity in the language of §12.21.A.20 and it is consistent with the language in §62.02.03.2.IX.C.

In fact, when the AGF Ordinance was adopted, the City Council intended that it supplement rather than preempt §12.21.A.20. All those who worked on the revisions of §12.21.A.20 and the AGF Ordinance, including the author, understood that §12.21.A.20 would govern the installation of all wireless facilities in the PROWs and the AGF Ordinance would govern the installations of auxiliary facilities to support the wireless facilities.

Street Lighting.

The Bureau of Street Lighting has adopted a Policy, Specifications, and Procedures for Communications Installations on Street Lighting Poles. It provides that installations of communications equipment shall be placed only on pre-approved steel or concrete poles that are taller than 25' in height and affixed with a cobrahead luminaire. Only one piece of communication equipment can be mounted on a pole unless approved by the Bureau.

The Policy also provides that an applicant can replace existing street lighting poles may be replaced, at the cost of the applicant, to accommodate weight in excess of maximum requirements.

The Policy also regulates aesthetics, requiring that the communication units be a color matching the existing luminaire, pole or arm or be white, brown, grey or beige. The Policy restricts the number of installations permitted to four on any city block that is less than a 1,000

feet long, and longer blocks, to four plus one for every additional 250 feet. There are no restrictions in manufacturing zones.

Communications equipment may not be installed on poles with the following conditions: 1. poles with more than one art display already attached. Art display refers to banners or other permanent medallion; 2. poles operating on series circuits; 3. poles with traffic signal equipment; 4. poles that have upright luminaries; 5. arms that are aluminum; and 6. ornamental poles.

Included in the Policy is the following statement:

> "Installations of communications equipment shall not be in conflict with any codes or specific plans of the Department of Planning, Building and Safety, or Department of Water and Power."

This is a strange position because the Policy does violate the Zoning Code in a number of aspects, first of all because the Zoning Code requires that a CUP be obtained which requires that notice be given and a hearing be held. The Policy does not provide for any notice to any other department, agency, Council office, or adjacent property owners. It does not provide for any appeal from any decision of the Department of Street Lighting to approve an application.

Nor does it comply with the height limit restrictions in the Zoning Code. An example is if an applicant decides it needs a 50 foot high pole and the existing pole is only 30 feet high. The applicant can replace the existing pole with a 50 foot high pole, even though the pole is located in a zone with a 35 foot height limit.

The Policy does have a restriction on pole mounted communications equipment which should be applied to all wireless antennae on any pole and that is that the equipment must not extend more than 6" from the exterior of the pole or extend more than 6" up from the top of the pole. Combined with the color requirements, this requires that the antenna be as inconspicuous as possible.

The JPA, AGF Ordinance, Street Lighting Regulations, and Are Consistent With In That They Each Supplement §12.21.A.20,

LAMC §12.21.A.20 is not in conflict with the JPA, or the AGF ordinance or the Street Lighting Regulations. What §12.21.A.20 does is superimpose requirements over the JPA AGF, and the Street Lighting Regulations. In order for a wireless provider to get a permit to install wireless equipment on a pole in the PROW, the provider must get approval from the JPA in addition to a CUP from the Zoning Administrator. If the provider needs to install auxiliary equipment on the surface of the PROW, then the provider must also get an AGF permit. If the provider is installing its facilities on a street light, it must get both approval from the Bureau of Street Lighting and a CUP from the Zoning Administrator. No agency has the sole authority to approve the installation of a wireless facility on a utility pole or street light, The authority is jointly exercised.

If LAMC §12.21.A.20 Applies to the Installations of All Wireless Facilities, Then Why Isn't It Being Enforced For Installations in the PROWs?

Interviews of Zoning Administrators as to why the Zoning Administrator is not enforcing the requirement that all installations of wireless facilities are required to obtain CUPs for such installations disclosed that the Zoning Administrators do not believe their office has jurisdiction over the PROWs. When asked why not, they believe that either the City Charter or in the Municipal Code confers all jurisdiction over the PROWs either on the Board of Public Works or the Department of Public Works. They were unable to cite any particular section and

the author did not belabor the point.

The fact is that there is no such provision in the City Charter. Charter Section 580 gives the Department of Public Works the power and duties to "design, construct, excavate and maintain streets and public works improvements including but not limited to bridges, public parkways and rights-of-way, sanitary sewers and storm drains, water and sewer treatment facilities, landfills and public rights-of-way lighting facilities owned by the City" and "perform other duties as may be assigned by ordinance..." But this by no means gives Public Works exclusive jurisdiction over the City's rights of way.

As previously noted, LAMC §12.21.A.20 gives the Zoning Administrator authority over wireless facility installations, notwithstanding any other provision in the Municipal Code so even if another provision in the Municipal Code assigned responsibility for the PROWs to the Department of Public Works, LAMC §12.21.A.20 carves out an exception for wireless facilities.

The confusion may originate with the City Attorney. In response to questions about the application of zoning regulations to theCBS /Decaux street furniture contract the City Attorney has opined that:[10]

> "The questions ...generally raise the issue of which City departments have authority and responsibility over the public road right of way. Much of what happens within the public road right of way falls squarely within the jurisdiction of the Department of Public Works."

The City Attorney concluded that the Planning Department had no jurisdiction over signage in the PROWs notwithstanding specific language in Specific Plans to the contrary and without any citation to any provision in either the City Charter or the Municipal Code that supported the conclusion. This opinion is one possible source of the confusion about the regulation of wireless facility installations in the PROW.

However, it is notable that the opinion did not state that everything that happens in the PROWs is in the exclusive jurisdiction of the Department of Public Works, so there is room for the City Attorney to opine that the LAMC §12.21.A.20 gives the Department of Planning jurisdiction over the installation of wireless facilities on poles in the PROWs, particularly since neither the Charter nor the Municipal Code gives the Department of Public Works any specific jurisdiction over such installations which LAMC §12.21.A.20 does five to the Planning Department.

CONCLUSION

All that is necessary to ensure all wireless facility installations, including such installations in the PROWs, are all uniformly regulated, is to apply LAMC §12.21.A.20 to each installation, as the Section requires. It may take either another opinion by the City

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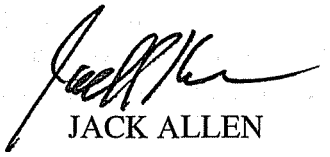
[10] City Attorney Report R08-0120 regarding REQUEST FOR REPORT REGARDING CBS DECAUX STREET FURNITURE dated April 21, 2008

Attorney or a motion by the City Council to achieve this result.

Dated: November 10, 2009

Respectfully,



JACK ALLEN

NOTE: The author is a retired attorney. He is the former City Attorney of Beverly Hills and specialized in land use and environmental law and trial and appellate litigation. He became involved in wireless telecommunications law in 1991 and has litigated cases involving wireless telecommunications facilities in trial and appellate courts at the state and federal level. He has been a consultant on wireless telecommunications facilities for 15 cities. He worked extensively with the City of Los Angeles in the drafting of its ordinance regulating wireless telecommunications facilities.

AGENDA #10, CF 09-2645

ORDINANCE NO. 174132

An ordinance amending Sections 11.5.7, 12.04.05, 12.04.09 12.12.1, 12.12.1.5, 12.17.6, 12.21, and 12.24 of the Los Angeles Municipal Code to establish development standards for the placement of Wireless Telecommunication Facilities either by right or through discretionary review, in all zones and specific plan areas, except for those in scenic corridors and scenic parkway specific plans.

THE PEOPLE OF THE CITY OF LOS ANGELES
DO HEREBY ORDAIN AS FOLLOWS:

Section 1. A new paragraph (f) is added to Subdivision 1 of Subsection F of Section 11.5.7 of the Los Angeles Municipal Code to read:

(f) Wireless Telecommunications Facilities. Any application involving the use, height, installation or maintenance of wireless telecommunication facilities located within specific plan areas shall be filed pursuant to Section 12.24 W 49 of this Code and considered by the Zoning Administrator as the initial decision-maker; except applications located within a scenic parkway specific plan, scenic corridor specific plan, or a roadway designated as a scenic highway within a specific plan area shall be subject to a specific plan exception.

Sec. 2. Subdivision 2 of Subsection B of Section 12.04.05 of the Los Angeles Municipal Code is amended to read:

2. Conditional uses as allowed pursuant to Section 12.24 U 19 and Section 12.24 W 49 of this Code when the location is approved pursuant to the provisions of the applicable section.

Sec. 3. Subdivision 10 of Subsection B of Section 12.04.09 of the Los Angeles Muncipal Code is amended to read:

10. Conditional uses as allowed pursuant to Section 12.24 U 21 and Section 12.24 W 49 of this Code when the location is approved pursuant to the provisions of the applicable section.

Sec. 4. Subsection A of Section 12.12.1 is amended by adding a new Subdivision 7 to read:

7. Conditional uses as allowed pursuant to Section 12.24 W 49 of this Code when the location is approved pursuant to the provisions of that section.

Sec. 5. Subsection A of Section 12.12.1.5 is amended by adding a new Subdivision 4 to read:

4. Conditional uses as allowed pursuant to Section 12.24 W 49 of this Code when the location is approved pursuant to the provisions of that section.

Sec. 6. Subsection A of Section 12.17.6 is amended by adding a new Subdivision 11 to read:

11. Wireless telecommunication facilities, including radio and television transmitters, which meet all the requirements of the wireless telecommunication facilities standards set forth in Section 12.21 A 20 of this Code, except when located across the street from, abutting, or adjoining a residential use or A or R Zone, including the RA zone.

Sec. 7. Subsection A of Section 12.21 of the Los Angeles Municipal Code is hereby amended by adding a new Subdivision 20 to read:

20. Wireless Telecommunication Facilities (WTF) Standards. Notwithstanding any provision of this Code to the contrary, the following standards shall apply to the placement of all wireless telecommunication facilities. These standards shall not apply to satellite dish antennae, radio and television transmitters and antennae incidental to residential use.

(a) General Requirements

(1) Antenna Requirements. The antenna on any monopole or support structure must meet the minimum siting distances to habitable structures required for compliance with Federal Communications Commission (FCC) regulations and standards governing the environmental effects of radio frequency emissions. The grouping of WTF on a site is encouraged where technically feasible. The footing of the antenna shall be structurally designed to support a monopole which is at least 15 feet higher than the monopole under review, while being within the applicable requirements of the height district, in order to allow a future wireless network to replace an existing monopole with a new monopole capable of supporting co-location.

If it is determined that additional height is necessary to support co-location, the Zoning Administrator is authorized to consider reasonable modifications to pole height, and the co-location of additional equipment within the 15 feet extension limit pursuant to Section 12.24 W 49 of this Code.

Monopoles, dishes and other antenna equipment not regulated by the Federal Aviation Administration (FAA) shall have a non-reflective finish to minimize the visibility of the structure and not be illuminated, unless required by the FAA.

(2) Antenna Setback

(i) Monopole setback. Monopoles shall be designed at the minimum functional height. All monopoles shall be set back a distance equal to 20 percent of the height of the monopole, from all abutting streets, residential uses, and in all zones, or areas with access to the public, unless a qualified structural engineer specifies in writing that any collapse of the pole will occur within a lesser distance under all foreseeable circumstances.

The monopole shall be certified by a professional structural engineer licensed in the State of California to meet any structural standards for steel antenna towers and structures set in the Electronic Industries Association/Telecommunications Industries Association Standards referenced as EIA/TIA-222-E and as amended. Monopoles shall meet the main building setback requirements of the underlying zone. The setback shall be sufficient to:

a. provide for an adequate vegetative, topographic or other buffer as set forth in Subparagraph (5) (Screening) and (6) (Landscaping) of Paragraph (a) of this subsection;

b. preserve the privacy of adjoining residential property; and

c. protect adjoining property from the potential impact of pole failure.

(ii) Attached or Roof Mounted Antenna Setback. Roof mounted antennas shall be located at the greatest feasible distance from the edge of the building. Equipment facilities and antennas shall not extend more than ten feet above the highest point of the roof top, unless mounted on the walls of a penthouse.

(3) Locating Antenna at Existing Sites. An effort shall be made to locate new WTF on existing approved structures or sites, when feasible.

(4) Visual impact. The WTF shall be designed to have the least possible visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. Antennas clustered at the same site shall be of the same general height and facilities of the same design.

(5) Screening

(i) Ground, roof and pole mounted antennas shall be screened by fencing, buildings or parapets that appear to be an integral part of the building or landscaping so that not more than 25 percent of the combined tower structure and antenna height is visible from grade level of adjoining property and adjoining public rights-of-way.

(ii) Dish antennas shall not be light reflective or have any sign copy on them nor shall they be illuminated, unless required by the FAA.

(iii) Building mounted antennas shall be screened from view under most circumstances, if the antennas would otherwise be visible to adjacent properties and adjacent public rights-of-way.

Omni-directional antennas may not be required to be screened if it is demonstrated that the screening device would create a greater visual impact than the unscreened antennas.

The screening shall include parapets, walls or similar architectural elements provided that it is painted and textured to integrate with the architecture of the building.

As an alternative screening method, landscaping positioned on the premises to screen antennas from adjacent properties may be proposed in lieu of, or in combination with, architectural screening. Antennas shall be mounted on the parapet, penthouse wall or facade, building mounted antennas shall be painted and textured or otherwise architecturally integrated to match the existing building.

(iv) Support structure antennas shall be placed on premises to minimize visual impacts to adjacent non-industrial properties and adjacent public rights-of-way. Landscaping shall be positioned on the premises to minimize the visual impacts to adjacent non-industrial properties and adjacent public rights-of-way.

(v) Accessory equipment and associated equipment facilities shall be located either in an interior space in the existing building or in an attached or detached exterior building. Exterior equipment buildings constructed on premises shall be architecturally similar to the existing building or otherwise architecturally integrated.

(vi) Monopoles shall be of tapered design (e.g., three foot base to 1.5 foot top) with no climbing spikes. Whenever possible, existing light standards in parking lots should be used with antennas above electroliers.

(6) Landscaping and Maintenance. Landscaping shall be required at the perimeter of the property which abuts streets, residential uses, and in all zones, or areas with access to the public as follows:

(i) For monopoles, a landscaped buffer area to soften the visual impact shall commence at the property line. At least one row of shrubs shall be spaced not more than three feet apart. Materials shall be of a variety which can be expected to grow to form a continuous hedge at least five feet in height within two years of planting. At least one row of trees or shrubs, not less than four feet in height at the time of planting, and spaced not more than 15 feet apart, also shall be provided. Appropriate irrigation and maintenance to sustain any required landscaping shall be required.

(ii) Pursuant to Section 12.24 W 49 of this Code, the decision-maker may allow use of an alternate detailed plan and specifications for landscape and screening, including plantings, fences, walls, sign and structural applications, manufactured devices and other features designed to screen, camouflage and buffer antennas, poles and accessory uses. The antenna and supporting structure or monopole shall be of a design and treated with an architectural material so that it is camouflaged to resemble a tree with a single trunk and branches on its upper part, or shall be designed using other similar slealth techniques.

(7) Signal Interference. Claims of interference with the operations of any business or residential use due to the operations of the facility shall be subject to correction by the permittee. Any claim shall be reviewed by a qualified, mutually agreeable third party who will test actual site conditions and propose mitigation of any interference determined to be due to the operation of the facility.

(8) Time Limits. All wireless telecommunication facilities shall be removed within 90 days of discontinuance of use.

(b) Application Requirements Checklist For Discretionary Actions. In addition to the submittal requirements prescribed for conditional use permits pursuant to Section 12.24 W 49 of this Code, an application for approval of a new, modified or additional wireless telecommunication facilities shall contain all of the following information:

(1) Site Plan. Site Plans or plot plans, drawn to scale, and elevation drawings, including "before" and "after" photographs specifying the location of antennas, support structures, power poles, utility boxes, transmission building and/or other accessory uses, access, parking, fences, signs, landscaped areas and adjacent land uses. A listing of the applicant's existing wireless telecommunication facilities shall also be included. Plans and drawings shall demonstrate compliance with the siting distances of Subparagraph (1) (Antenna Requirements) and Subparagraph (2) (Antenna Setback) of Paragraph (a) of this subdivision.

(2) Landscape and Irrigation Plan. A Landscaping and Irrigation Plan, drawn to scale, and elevation drawings including "before" and "after" photographs indicating size, spacing and type of plantings required in Subparagraph (6) of Paragraph (a) (Landscaping), and indicating steps to be taken to provide screening as required in Subparagraph (5) of Paragraph (a) (Screening) to meet the visual impact standard of Subparagraph (4) of Paragraph (a) (Visual Impact) of this subdivision.

(3) Structural Integrity Report. A Structural Integrity Report from a professional engineer licensed in the State of California documenting the following:

(i) Tower height and design, including technical, engineering, economic, and other pertinent factors governing selection of the proposed design;

(ii) Total anticipated capacity of the structure, including number and types of antennas which can be accommodated;

(iii) Failure characteristics of the tower and demonstration that site and setbacks are of adequate size to contain debris in the event of failure; and

(iv) Specific design and reconstruction plans to allow shared use. (This submission is required only in the event that the applicant intends to share use of the facility by subsequent reinforcement and reconstruction of the WTF.)

(4) FAA and FCC Coordination. Statements regarding the regulations of the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC), respectively, that:

(i) (required only if the WTF is near an airfield) the application has not been found to be a hazard to air navigation under Part 77, Federal Aviation, Federal Aviation Regulations, or a statement from the applicant that no compliance with Part 77 is required, and the reasons therefor; and/or

(ii) (required of all WTF applicants) the application complies with the regulations of the Federal Communications Commission, or a statement from the applicant that compliance is not necessary, and the reasons therefor.

(5) Evidence of Co-location Efforts. Evidence submitted to the Department of City Planning on those requiring discretionary review pursuant to Section 12.24 W 49 of this Code or to the Department of Building and Safety for those that are permitted by right prior to the issuance of a building permit, that an effort was made to locate on an existing WTF site including coverage/interference analysis and capacity analysis and a brief statement as to other reasons for success or no success, including a listing of alternative sites that were examined, as set forth in Subparagraph (3) Locating Antenna at Existing Sites) and Subparagraph (5) (Screening) of Paragraph (a) of this subdivision.

(6) Existing Facilities Information. A listing of addresses and type (i.e., monopole, antenna) of all WTF's within the City of Los Angeles which are operated by the applicant.

(7) Coverage/Capacity Report (Propagation Study). A coverage/interference analysis and capacity analysis (also known as a propagation study) that the location and height of the antennas as proposed is necessary to meet the frequency re-use and spacing needs of the system and to provide adequate wireless telecommunication coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive zone or that an effort was made to locate on existing sites or towers, with no success.

(c) Approval Criteria. In addition to the findings for approval required pursuant to Section 12.24 W 49 of this Code, a Zoning Administrator may allow a new, modified or additional wireless telecommunication antenna or facility use based on additional findings that the following criteria are met:

(1) The site is of a size and shape sufficient to provide the following setbacks:

(i) For a monopole or tower, the tower setback requirements of Subparagraph (2) (Antenna Setback) of Paragraph (a) of this subdivision are met as to those portions of the property abutting the residential or public uses.

(ii) For all other towers or monopoles, the site shall be of sufficient size to provide the setback required in the underlying zone between the base of the tower, accessory structures and uses, and guy anchors, if any, to all abutting property lines.

(2) The required setbacks shall be improved to meet the screening and landscaping standards of Subparagraph (5) (Screening) and Subparagraph (6) (Landscaping) of Paragraph (a) of this subdivision to the extent possible within the area provided.

(3) The visual impact standard of Subparagraph (4) of Paragraph (a) of this subdivision is met; and

(4) An effort in good faith was made by the applicant to locate on existing sites or facilities in accordance with the guidelines of Subparagraph (3) (Locating Antenna at Existing Sites) of Paragraph (a) of this subdivision.

(d) Variations From The Citywide Wireless Telecommunication Standards. The Zoning Administrator shall have the authority to consider requests to vary from these standards pursuant to Section 12.24 W 49 of this Code.

Sec. 8. Subdivision 49 of Subsection W of Section 12.24 of the Los Angeles Municipal Code is hereby amended to read:

49. Wireless telecommunication facilities, including radio and television transmitters citywide:

(a) In all zones, and in the M1, M2, or M3 zones only when the facility is located across the street from, abutting, or adjoining a residential use or A or R zone, including the RA zone.

(b) In the M1, M2, or M3 zones if the applicant cannot meet the WTF standards; and

(c) In specific plan areas, except for those located within scenic corridors, scenic parkway specific plans areas and upon a roadway designated as a scenic highway within a specific plans areas.

(d) Findings. In making the findings in Section 12.24 E of this Code, to allow any variations from the Wireless Telecommunication Facilities Standards, the Zoning Administrator shall consider and balance the benefit to the public with the technological constraints, the design, the location of the facility, as well as other relevant factors. In addition to the findings otherwise required by this section, in approving a conditional use a Zoning Administrator shall also make the following findings:

(1) that the project is consistent with the general requirements of the Wireless TelecommunicationFacilities Standards set forth in Section 12.21A 20 of this Code; and

(2) that the use would have no substantial adverse impact on properties or improvements in the surrounding neighborhood.

(59510)

Sec. 9. The City Clerk shall certify to the passage of this ordinance and have it published in a daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of JUL 17 2001.

J. MICHAEL CAREY, City Clerk

By _____
Deputy

Approved JUL 30 2001

_____
Mayor

Approved as to Form and Legality

July 17, 2001

James K. Hahn, City Attorney

By _____
GWENDOLYN R. POINDEXTER
Assistant City Attorney

Pursuant to Charter Section 559, I disapprove this ordinance and do not recommend its adoption on behalf of the City Planning Commission . . . . . .

June 14, 2001

see attached report.

_____
GON HOWE
Director of Planning

File No. CF 99-0296 / CPC 99-0198